

Testimony of Andrew A. Feinstein  
On Raised Bill No. 5562  
March 17, 2014

Honorable Members of the Education Committee:

I hereby offer my comments concerning RB 5562, which contains three provisions. First, the bill would establish a separate category of disability known as Specific Learning Disability – Dyslexia. Second, the bill would make clear that parents could decline to enroll their children in kindergarten. Third, the bill would create a three-tier formula for excess cost reimbursement.

I am a lawyer who devotes my entire practice to representing parents who have children with disabilities seeking a free appropriate public education. It is from this perspective that I comment.

As to Section 1, I support passage, even though the provision should be unnecessary. Dyslexia is a scientifically recognized form of learning disability that is present in up to 20% of schoolchildren. It is marked by difficulty in reading, often in very bright children. There is no argument about the fact that dyslexia is a specific learning disability. The reason the legislation is necessary is that schools throughout the State frequently refuse to recognize dyslexia. Some confuse it with attention deficit disorder. Others assert the struggling child is making a behavioral choice. Adding it as a separate category should send a strong message that the disability is real and needs to be considered.

Of course, passage of this legislation alone will not cure the situation. The State Department of Education needs to take the lead in providing training and guidance materials to school districts about how to recognize and diagnose dyslexia and best practices to teaching dyslexics. To date, the State Department of Education has failed to do so.

Section 2 also should be unnecessary because it merely restates a pre-existing right. Sadly, school districts are not good learners and mislead parents into believing that they cannot keep their children out of kindergarten. Hence, as with section 1, section 2 is needed to overcome school district misunderstanding and the failure of the State Department of Education to enforce the law.

Section 3 is far more troubling. Let's take a hypothetical school district with a per pupil cost of \$15,000. Let's say the district has four special education students in expensive placements: one for \$25,000; one for \$50,000; one for \$75,000 and one for \$100,000. Under current law, subject to appropriations, the district would receive \$40,000 in excess cost reimbursements. Under the proposed legislation, the district would receive, again subject to appropriations, the district would receive \$76,925, nearly double the current amount.

No one expects the legislature to double its appropriation for excess cost reimbursement. If overall appropriations remained the same, this would mean that districts would have to pay substantially more for their high cost placements of severely disabled children. The result would be that district would utilize cheaper and less effective placements for those children with the most severe needs. And, because such bargain placements will fail to meet the needs of these children, there will be an increase in successful litigation to ensure that these children receive a free appropriate public education.

The ramifications of this three-tier system are complicated and largely unforeseeable. Placement incentives for school districts would change markedly. Hence, this is a dangerous proposal and should be stricken from the bill.

On the other hand, the Legislature should closely investigate the excess cost legislation. There is substantial evidence of districts submitting for educational services never provided. The

fact that excess cost funds often go to the Town and not to the school budget reduces the usefulness of this provision. And, excess cost reimbursement encourages out-of-district placements when our resources ought to be going to building capacity and excellence within school districts.

I am glad to work with this committee to develop a reasonable approach to State funding of special education in local school districts. Special education is a very complicated system and changes in funding provisions need to be thought out carefully.

Thank you for this opportunity to testify.

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